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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

REGENTS OF UNIVERSITY OF CALIFORNIA and
JANET NAPOLITANO, in her official capacity as
President of the University of California,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOMELAND
SECURITY and ELAINE DUKE, in her official capacity
as Acting Secretary of the Department of Homeland
Security,

Defendants.

CASE NO. 17-CV-05211-WHA

**PLAINTIFFS' RESPONSE TO
TENTATIVE ORDER**

Judge: Honorable William Alsup

STATE OF CALIFORNIA, STATE OF MAINE,
STATE OF MARYLAND, STATE OF MINNESOTA,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY,
ELAINE DUKE, in her official capacity as Acting
Secretary of the Department of Homeland Security, and
the UNITED STATES OF AMERICA,

Defendants.

CASE NO. 17-CV-05235-WHA

CITY OF SAN JOSE, a municipal corporation,

Plaintiff,

v.

DONALD J. TRUMP, President of the United States, in
his official capacity, ELAINE C. DUKE, in her official
capacity, and the UNITED STATES OF AMERICA,

Defendants.

CASE NO. 17-CV-05329-WHA

DULCE GARCIA, MIRIAM GONZALEZ AVILA,
SAUL JIMENEZ SUAREZ, VIRIDIANA CHABOLLA
MENDOZA, NORMA RAMIREZ, and JIRAYUT
LATTHIVONGSKORN,

Plaintiffs,

v.

UNITED STATES OF AMERICA, DONALD J.
TRUMP, in his official capacity as President of the
United States, U.S. DEPARTMENT OF HOMELAND
SECURITY, and ELAINE DUKE, in her official
capacity as Acting Secretary of Homeland Security,

Defendants.

CASE NO. 17-CV-05380-WHA

County of Santa Clara and Service Employees
International Union Local 521,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States, JEFFERSON
BEAUREGARD SESSIONS, in his official capacity as
Attorney General of the United States; ELAINE DUKE,
in her official capacity as Acting Secretary of the
Department of Homeland Security; and U.S.
DEPARTMENT OF HOMELAND SECURITY,

Defendants.

CASE NO. 17-CV-05813-WHA

1 Plaintiffs appreciate the Court’s prompt attention to their motion for stay. The Court’s tentative
2 order, which provides the government ample time to compile the completed administrative record,
3 relieves any purported need for Supreme Court review at this stage, and properly focuses the next phase
4 of the case on resolving plaintiffs’ pending motion for provisional relief and defendants’ pending motion
5 to dismiss. Plaintiffs would propose the following adjustments to the Court’s tentative order:

6 Rather than setting a date certain for the filing of the completed administrative record, the Court
7 should require that the record be filed within seven days after the Court rules on the government’s
8 motion to dismiss and the plaintiffs’ motion for provisional relief. This will ensure that the Court’s
9 findings regarding the government’s pretext and bad faith, and regarding the government’s jurisdictional
10 defenses, will be entered prior to the filing of the administrative record. This would eliminate the
11 government’s argument that record completion is premature before these findings are made. If the Court
12 were to agree with plaintiffs (a) that the stated reasons for the rescission of DACA are pretextual; and
13 (b) that the government’s threshold jurisdictional defenses are ill-founded, then there would no longer be
14 any plausible argument against the expanded record the Court has correctly ordered. *See Citizens to*
15 *Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971) (authorizing supplementation of record
16 in APA claims, including “inquiry into the mental process of administrative decisionmakers,” where
17 there is a “strong showing of bad faith or improper behavior”).

1 Dated: November 20, 2017

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